

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

GE HFS HOLDINGS, INC.

*formerly known as*

HELLER HEALTHCARE FINANCE, INC.,

Plaintiff,

and

MICHAEL INGOLDSBY,

Intervenor Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE

COMPANY OF PITTSBURGH, PA. and

INTERNATIONAL INSURANCE GROUP, LTD.

Defendants.

Civil Action No. 05-CV-11128 NG

**RESPONSE OF GE HFS HOLDINGS, INC. TO  
OPPOSITION OF DEFENDANT NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA TO PLAINTIFF  
GE HFS HOLDINGS, INC.'S EMERGENCY MOTION TO  
MAKE PAYMENT PURSUANT TO SETTLEMENT AGREEMENT  
TOGETHER WITH ATTORNEYS' FEES, COSTS AND INTEREST**

GE HFS Holdings, Inc. ("GE HFS") responds to the Opposition of Defendant National Union Fire Insurance Company of Pittsburgh, PA ("National Union") to Plaintiff GE HFS Holdings, Inc.'s Emergency Motion to Make Payment Pursuant to Settlement Agreement Together with Attorneys' Fees, Costs and Interest (the "Opposition"), stating as follows:

1. On or about October 23, 2006, after numerous demands, which were either not responded to or met with delay and/or unfulfilled promises of future performance, GE HFS filed its Emergency Motion to Compel National Union Fire Insurance Company of Pittsburgh, PA to Make Payment Pursuant to Settlement Agreement Together with Attorneys' Fees, Costs and

Interest. GE HFS has been harmed as a result of the: (i) incurrence of additional legal fees resulting from National Union's dilatory tactics in breach of the explicit promise to pay; and (ii) the loss of the use of the Settlement Sum for thirty-one (31) days.<sup>1</sup>

2. On or about October 27, 2006, National Union filed the Opposition.

3. After filing the Motion, the Settlement Sum check was finally received on October 31, 2006.

4. The Opposition contains false and baseless assertions by National Union as to why the Court should deny the Motion.

5. National Union asserts that GE HFS waived the right to payment upon execution of the Settlement Agreement because GE HFS insisted at the last minute and without prior notice to National Union that it would require delivery of the executed Settlement Agreement in September and as a result National Union was unprepared to deliver the Settlement Sum as required under the terms of the Settlement Agreement. In fact, by and through the Opposition, National Union admits to entering into the Settlement Agreement with the intent of immediately breaching it by not making the Settlement Sum payment as required.

6. In fact, it was always the understanding between National Union and GE HFS that the Settlement Agreement would be executed in September with the Settlement Sum delivered in early October.

7. Attached hereto as Exhibit A is a series of email communications between John Hughes, counsel for National Union, and Jeffrey Francis, co-counsel to GE HFS, confirming the agreement to the settlement arrangement. On August 24, 2006, Mr. Hughes' emailed Mr.

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<sup>1</sup> To the extent otherwise undefined herein, each capitalized term shall have the meaning assigned in GE HFS' Emergency Motion to Compel National Union Fire Insurance Company of Pittsburgh, PA to Make Payment Pursuant to Settlement Agreement Together with Attorneys' Fees, Costs and Interest (the "Motion").

Francis, setting forth the timing of the documentation and the payment, and Mr. Francis' responded as follows:

Jeff: Confirming my voicemail message, we have agreed to settle this matter for [ ]. We will put together a settlement agreement for your review. Since I will be out next week, we won't be able to get that to you until towards the end of the week after Labor Day. As I also mentioned in my voice mail, it takes about a month to get the settlement funds. Thus, I expect that they will be available in early October.

Best regards,  
John

John:

Sounds fine. We have a deal.

Jeff

8. Following numerous telephone calls to Mrs. Hughes, on September 19, 2006, Gayle Ehrlich, co-counsel for GE HFS, emailed Mr. Hughes urging delivery of the Settlement Agreement and informing him that the settlement would be unacceptable unless the documents were executed that week. Later, the deadline was extended until September 26, 2006. Attached hereto as Exhibit B is the series of email communications between counsel.

9. As evidenced by Mr. Hughes' email of August 24, 2006, National Union was aware of the requirement to deliver the executed Settlement Agreement and the Settlement Sum the first week of October 2006, a deadline set as part of the negotiations.

10. Finally, contrary to National Union's assertion, there is no such thing as a waiver by implication, especially when all facts contradict the assumptions underlying the asserted implication. GE HFS at all times insisted upon a timely delivery of the Settlement Agreement and Settlement Sum.

11. In the event the Court grants GE HFS legal fees and interest, GE HFS will file under seal a statement of the amount of the Settlement Sum and such other information as it may be directed to allow for the calculation of interest and legal fees.

12. GE HFS withdraws its request for a hearing and requests the Court rule upon the papers.

WHEREFORE, GE HFS respectfully requests the Court grant the Motion and such further and additional relief as this Court may deem just and proper.

Respectfully submitted,

GE HFS HOLDINGS, INC.,  
formerly known as  
HELLER HEALTHCARE FINANCE, INC.,

By its attorneys,

/s/ Gayle P. Ehrlich  
Gayle P. Ehrlich (BBO # 546861)  
Jeffrey E. Francis (BBO # 639944)  
SULLIVAN & WORCESTER LLP  
One Post Office Square  
Boston, Massachusetts 02109  
Tel. No.: (617) 338-2800  
Fax No.: (617) 338-2880  
[gehrlich@sandw.com](mailto:gehrlich@sandw.com)

DATED: November 6, 2006

# **EXHIBIT A**

**Ehrlich, Gayle**

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**From:** Francis, Jeffrey  
**Sent:** Monday, November 06, 2006 12:32 PM  
**To:** Ehrlich, Gayle  
**Subject:** FW: GE HFS

Here is one.

-----Original Message-----

**From:** Hughes, John [mailto:JHughes@eapdlaw.com]  
**Sent:** Thursday, August 24, 2006 8:12 PM  
**To:** Francis, Jeffrey  
**Cc:** Ehrlich, Gayle  
**Subject:** RE: GE HFS

Great.

Best regards.

**John D. Hughes**  
Partner  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, MA 02199

Direct 617 951.3373  
Fax 888 325.9109

[www.eapdlaw.com](http://www.eapdlaw.com)

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**From:** Francis, Jeffrey [mailto:jfrancis@sandw.com]  
**Sent:** Thursday, August 24, 2006 5:25 PM  
**To:** Hughes, John  
**Cc:** Ehrlich, Gayle  
**Subject:** RE: GE HFS

John:

Sounds fine. We have a deal.

Jeff

-----Original Message-----

**From:** Hughes, John [mailto:JHughes@eapdlaw.com]  
**Sent:** Thursday, August 24, 2006 3:22 PM  
**To:** Francis, Jeffrey  
**Subject:** GE HFS

Jeff: Confirming my voicemail message, we have agreed to settle this matter for We will put together a settlement agreement for your review. Since I will be out next week, we won't be able to get that to you until towards the end of the week after Labor Day. As I also mentioned in my voice mail, it takes about a month to get the settlement funds. Thus, I expect that they will be available in early October.

11/6/2006

Best regards.  
John

**John D. Hughes**

Partner  
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111 Huntington Avenue  
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[www.eapdlaw.com](http://www.eapdlaw.com)

Boston, Ft. Lauderdale, Hartford, New York, Providence, Short Hills, Stamford, West Palm Beach, Wilmington, London  
(Representative office)

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# **EXHIBIT B**



## Ehrlich, Gayle

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**From:** Hughes, John [JHughes@eapdlaw.com]  
**Sent:** Friday, September 29, 2006 9:25 AM  
**To:** Ehrlich, Gayle  
**Subject:** RE: Heller vs. National Union

Gayle: I called my contact. She is going to try to reach her boss.  
Best regards.  
John

John D. Hughes  
Partner  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, MA 02199

Direct 617 951.3373  
Fax 888 325.9109

[www.eapdlaw.com](http://www.eapdlaw.com)

-----Original Message-----

**From:** Ehrlich, Gayle [mailto:gehrlich@sandw.com]  
**Sent:** Friday, September 29, 2006 8:59 AM  
**To:** Hughes, John  
**Subject:** Re: Heller vs. National Union

That is unacceptable. This is to be wrapped up today.  
What would you suggest?  
I

Gayle P. Ehrlich  
Attorney at Law

Sullivan & Worcester LLP  
One Post Office Square  
Boston, MA 02109

T 617 338 2453  
F 617 338 2880  
[gehrlich@sandw.com](mailto:gehrlich@sandw.com)  
[www.sandw.com](http://www.sandw.com)

BOSTON NEW YORK WASHINGTON, DC

-----Original Message-----

**From:** Hughes, John  
**To:** Ehrlich, Gayle  
**CC:** Francis, Jeffrey  
**Sent:** Fri Sep 29 08:55:22 2006  
**Subject:** RE: Heller vs. National Union

Hi Gayle: My contact at AIG is out today. She will be in all day Monday. I'm confident that we will be able to wrap this then.  
Best regards.  
John

John D. Hughes

Partner  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, MA 02199

Direct 617 951.3373  
Fax 888 325.9109

www.eapdlaw.com

-----Original Message-----

From: Ehrlich, Gayle [mailto:gehrlich@sandw.com]  
Sent: Thursday, September 28, 2006 3:17 PM  
To: Hughes, John  
Cc: Francis, Jeffrey  
Subject: RE: Heller vs. National Union

John,

We find the document acceptable with the following revisions:

We have revised the draft you forwarded to reflect these changes.

Attached you will find: a redline version of the further revised agreement, a clean copy, and GE's signature to the further revised agreement which is provided conditioned upon my receipt of National Union's signature to the agreement by 11:00 a.m. tomorrow. We would of course appreciate receiving the signature at your client's earliest convenience.

Regards,

Gayle

-----Original Message-----

From: Hughes, John [mailto:JHughes@eapdlaw.com]  
Sent: Thursday, September 28, 2006 10:20 AM  
To: Hughes, John; Ehrlich, Gayle  
Cc: Francis, Jeffrey  
Subject: RE: Heller vs. National Union

Hi Gayle: Attached is a revised draft of the settlement agreement that contains:

If these modifications are acceptable to GE, then AIG will agree to the other changes you made. Put differently, AIG agrees to the terms of the settlement agreement as attached to this message.

As soon as you tell me that this draft is acceptable to GE as well, I'll get you a clean copy for signature and have a copy signed by my client.

Best regards.

John

John D. Hughes  
Partner  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, MA 02199

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-----Original Message-----

From: Hughes, John  
Sent: Wednesday, September 27, 2006 1:09 PM  
To: 'Ehrlich, Gayle'  
Cc: Francis, Jeffrey  
Subject: RE: Heller vs. National Union

Gayle: My contact at AIG has been out on the west coast yesterday and today tied up in a mediation. She understands that you need to know what issues with respect to the agreement are on the table. I will follow up with her first thing tomorrow morning when she returns to her office.

Best regards.  
John

John D. Hughes  
Partner  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, MA 02199

Direct 617 951.3373  
Fax 888 325.9109

www.eapdlaw.com

-----Original Message-----

From: Ehrlich, Gayle [mailto:gehrlich@sandw.com]  
Sent: Tuesday, September 26, 2006 4:12 PM  
To: Hughes, John  
Cc: Francis, Jeffrey  
Subject: RE: Heller vs. National Union

John,

Following up on my messages of last week and our discussion of yesterday, we need to have the papers completed ASAP. Please let me know what the outstanding issues might be.

Thanks,

Gayle

-----Original Message-----

From: Hughes, John [mailto:JHughes@eapdlaw.com]  
Sent: Tuesday, September 19, 2006 6:35 PM  
To: Ehrlich, Gayle  
Cc: Francis, Jeffrey  
Subject: RE: Heller vs. National Union

**Ehrlich, Gayle**

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**From:** Ehrlich, Gayle  
**Sent:** Tuesday, September 26, 2006 4:12 PM  
**To:** 'Hughes, John'  
**Cc:** Francis, Jeffrey  
**Subject:** RE: Heller vs. National Union

John,

Following up on my messages of last week and our discussion of yesterday, we need to have the papers completed ASAP. Please let me know what the outstanding issues might be.

Thanks,

Gayle

-----Original Message-----

From: Hughes, John [mailto:JHughes@eapdlaw.com]  
Sent: Tuesday, September 19, 2006 6:35 PM  
To: Ehrlich, Gayle  
Cc: Francis, Jeffrey  
Subject: RE: Heller vs. National Union

Gayle: As it so happens, we are sending out our own draft to our client tonight and should have our proposed draft to you by the end of this week. This should enable us to get the Agreement executed next week.

Best regards.

John

John D. Hughes  
Partner  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, MA 02199

Direct 617 951.3373  
Fax 888 325.9109

[www.eapdlaw.com](http://www.eapdlaw.com)

-----Original Message-----

From: Ehrlich, Gayle [mailto:gehrlich@sandw.com]  
Sent: Tuesday, September 19, 2006 4:19 PM  
To: Hughes, John  
Cc: Francis, Jeffrey  
Subject: Heller vs. National Union

John,

Attached you will find a form of settlement agreement in this matter, which is provided to you subject to our client's review and comment.

<<Heller Settlement as Sent (B0555974).DOC>> We have waited a couple of weeks for you to provide your draft to us and in the interest of finalizing the settlement are providing you with the attached draft. We understand that you have a full schedule and mean you no disrespect.

It is necessary to our client's interest that settlement documentation

**Ehrlich, Gayle**

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**From:** Ehrlich, Gayle  
**Sent:** Wednesday, September 20, 2006 11:57 AM  
**To:** 'Hughes, John'  
**Cc:** Francis, Jeffrey  
**Subject:** RE: Heller vs. National Union

John,

There was every expectation based on the schedule you set in August that the settlement documentation would have been completed by now. Your office was to provide the settlement documents the first week of September. Please be aware that the settlement proposal is only acceptable if the documents are signed and delivered to Heller no later than close of business on Tuesday, September 26th. Otherwise, Heller will immediately pursue the litigation with full vigor.

With this schedule in mind, I would strongly urge you to provide us with your proposed documents as soon as possible, but not later than this Friday morning. Please confirm your ability to meet this schedule. Thank you for your anticipated cooperation.

Gayle

--Original Message-----

From: Hughes, John [mailto:JHughes@eapdlaw.com]  
Sent: Tuesday, September 19, 2006 6:35 PM  
To: Ehrlich, Gayle  
Cc: Francis, Jeffrey  
Subject: RE: Heller vs. National Union

Gayle: As it so happens, we are sending out our own draft to our client tonight and should have our proposed draft to you by the end of this week. This should enable us to get the Agreement executed next week.

Best regards.

John

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-----Original Message-----

From: Ehrlich, Gayle [mailto:gehrlich@sandw.com]  
Sent: Tuesday, September 19, 2006 4:19 PM  
To: Hughes, John  
Cc: Francis, Jeffrey  
Subject: Heller vs. National Union

John,

Attached you will find a form of settlement agreement in this matter, which is provided to you subject to our client's review and comment.

be executed this week.

Please review the attached and provide us with your comments as soon as humanly possible.

Thank you,

Gayle

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